

STATE OF MICHIGAN
IN THE SUPREME COURT

JOSHUA WADE,

Plaintiff/Appellant,

v.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN,

Defendant/Appellee.

MI SCT Case Number 156150
COA Docket No. 330555
Court of Claims Case No. 15-000129-MZ

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
AND
BRIEF OF JOSEPH MUHA AS AMICUS CURIAE**

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Joseph Muha¹ by this instrument moves this Honorable Court for leave to appear as *Amicus Curiae* in this matter and file his Amicus Curiae Brief submitted here in support of Appellant Wade.

1. Mr. Muha is a private citizen who serves the University of Akron Law School as an adjunct professor teaching Second Amendment and firearms law.
2. Mr. Muha is an NRA Certified Basic Pistol instructor.
3. Mr. Muha is the father of a near college-aged daughter who may be interested in attending the University of Michigan as a student. As a result, he may be on campus during her selection process and academic experience.
4. The issues raised in the instant case, specifically, are of great interest and importance to Mr. Muha.
5. Specifically, Mr. Muha is concerned about the University of Michigan's Regents action concerning Ordinance, Article X: Weapons and its impact to firearms on campus.
6. The Amicus Curiae Brief is submitted here.

Mr. Joseph Muha respectfully requests this Honorable Court to grant leave to file the proposed Amicus Curiae Brief in support of Appellant Wade.

Respectfully Submitted,

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¹ Per Rule 7.212 (H), counsel for neither party authored this brief in whole or in part. Counsel for neither party made a monetary contribution to fund the preparation or submission of the brief. No person, other than Mr. Muha made such a monetary contribution to prepare and submit this brief.

TABLE OF CONTENTS

- I. TABLE OF AUTHORITIES
- II. INTRODUCTION AND INTEREST OF AMICUS CURIAE
- III. FACTUAL AND PROCEDURAL BACKGROUND
- IV. ARGUMENT
- V. CONCLUSION

I. TABLE OF AUTHORITIES

Cases

<i>Ter Beek v. City of Wyoming</i> , 495 Mich 1, 10 (2014).....	6,7
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Statutes and Provisions

MCL § 123.1102	6,7
Michigan Constitution Art. I, §6	5
Second Amendment (U.S. CONST.AMEND II)	5

Other Sources

Dillon’s Treatise on the Law of Municipal Corporations (1872).....	8
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II. INTRODUCTION AND INTEREST OF AMICUS CURIAE

Joseph Muha respectfully appears as amicus curiae in order to provide a specialized viewpoint as a part-time academic, NRA Basic Pistol Instructor, and the father of a near college-aged daughter. Mr. Muha could likely appear in Michigan for the purposes of accompanying his daughter and wife when evaluating colleges from which his daughter will choose for her education. Further, as a resident of Ohio who visits Michigan for personal reasons, and as an Ohio concealed handgun licensee, Mr. Muha may choose to carry a firearm for personal protection when visiting the Wolverine state as Michigan and the Buckeye state honor each other's permitting scheme. Mr. Muha would not want to find himself unknowingly violating a dogmatic decree of the University of Michigan's Board of Regents. For the reasons discussed here, Mr. Muha submits that the pre-emption contemplated by the Michigan Legislature prevents the University of Michigan's Regents to promulgate and enforce Ordinance, Article X: Weapons.

III. FACTUAL AND PROCEDURAL BACKGROUND

Appellant Joshua Wade attempted to exercise his federal Second Amendment and Michigan Article I, §6 right to keep and bear arms. This right was denied by Ordinance, Article X as decreed by the University of Michigan Board of Regents, who deem themselves to be an authority of equal power to the Michigan Legislature.

What makes this case particularly vexing is that the City of Ann Arbor, where one may freely exercise their aforementioned rights, and the University of Michigan in Ann Arbor, where the Regents have denied such a right, exist in a manner without clearly

visible delineations. One could cross a street and find one's self in violation of the Regent's diktat without realizing one has left Ann Arbor, or even the authority of the Michigan legislature if the Regents are to be believed.

The Ordinance, Article X was challenged at trial and again on appeal. Boldly, among the arguments made by the Board of Regents, the Regents assert that they have plenary powers equal to those of the Legislature. This court granted *certiorari* and the appeal and response have been filed.

IV. ARGUMENT

Specifically, this Amicus Curiae Brief supports the position that MCL §123.1102 pre-empt's Ordinance, Article X. The lower courts erred by ignoring the plain text of the law and precedent rulings regarding the interpretation of MCL §123.1102.

Preemption exists when a superior authority, such as a legislative body or a court, makes a strategic policy that impedes a subordinate unit of government's authority over a specific facet of the law. Typically, such preemption replaces a mélange of discordant, decentralized policies with a uniform policy across numerous, subordinate authorities.

MCL §123.1102 expressly prohibits a local unit of government from regulating "any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state." Two superior branches of state government, in this case the Executive of the State of Michigan and the Michigan Legislature, when signing the bill into law and when passing the bill through the Michigan Legislature, expressly

preempted actions to the contrary. Now, the third, co-equal branch of government, this Honorable Court, must review the instant case. The path is clear for this Court. Indeed, this Court noted that “the propose of [a legislative branch] is the ultimate touchstone in every preemption case.” *Ter Beek v. City of Wyoming*, 495 Mich 1, 10 (2014) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565; 129 S.Ct. 1187; 173 L.Ed. 51 (2009), quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485; 116 S.Ct. 2240; 135 L.Ed.2d 700 (1996)). “If the federal statute contains a clause expressly addressing preemption, ‘we “focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ preemptive intent.”’ *Ter Beek* (quoting *Chamber of Commerce v. Whiting*, 563 U.S. —, —; 131 S.Ct. 1968, 1977; 179 L.Ed.2d 1031 (2011), quoting *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658, 664; 113 S.Ct. 1732; 123 L.Ed.2d 387 (1993)). That same logic should rightfully apply to a state statute and the role the Michigan Legislature plays as a parallel to federal statutes and Congress. Such a regulatory scheme is not unique to Michigan. Indeed, the Congressional Sportsmen’s Foundation website notes that at the start of 2019, forty-three states had firearm preemption laws <http://congressionalsportsmen.org/policies/state/firearms-preemption>. In 2019, Oklahoma and Texas joined the majority, leaving only New York, New Jersey, Massachusetts, Connecticut, and Hawaii as the distant outliers. Here, the Michigan Legislature clearly occupies the field in the state with respect to firearm laws. The intent of such laws is to create a uniform standard across a state. The plain reading of the statute evidences the preemptive intent. Ordinance, Article X: Weapons is therefore conflict-preempted by MCL §123.1102.

To further look at the limited scope in which a subordinate unit may properly act, courts have used Dillon's Rule, from John Dillon's 1872 *Treatise on the Law of Municipal Corporations*, to best determine when a local government only has the proper authority to act. Under Dillon's Rule, local governments may properly act when:

- 1) the power is granted in the express words of the statute, private act, or charter creating the municipal corporation;
- (2) the power is necessarily or fairly implied in, or incident to the powers expressly granted; or
- (3) the power is one that is neither expressly granted nor fairly implied from the express grants of power, but is otherwise implied as essential to the declared objects and purposes of the corporation.

As a result, the Rule creates a very limited scope in which a local government may operate. The University of Michigan's Board of Regents does not have the power found in Ordinance, Article X granted to it when the University of Michigan was created, this power is not implied in the actions that created the University of Michigan, and the power it seeks to use in Ordinance, Article X is not essential to further the purpose for which the University of Michigan was created. It is acting in an *ultra vires* manner and this Court must bring the University of Michigan's Board of Regents to heel so that the Regents may no longer act in such a manner.

V. CONCLUSION

This Honorable Court should reject the arguments made by the Regents and consider the conflict-preemption argument along with Dillon's Rule to ensure that a body

subordinate to the both the Michigan Legislative and the Executive branches of government are not acting in an *ultra vires* manner as they are when they promulgated Ordinance, Article X. The Michigan Legislature is that body which passes law, not the University of Michigan Board of Regents. The Governor of Michigan signs the bill into law, not the University of Michigan Board of Regents. The Michigan Supreme Court determines the meaning of the laws passed by the Michigan Legislature and signed by Michigan's Governor, not the University of Michigan Board of Regents. The Regents may not exercise a power over ordinary citizens beyond those specifically granted to them. Further, as a state institution, they may not create rules in conflict with state laws where there is a clear, express preemption of such action.

The decisions of the lower courts were wrongfully decided and should be reversed for the reasons stated here and in the appellant's brief.

RELIEF REQUESTED

For all of the foregoing reasons, Amicus Curiae, Joseph Muha, requests that this Honorable Court reverse the lower court decisions.

Respectfully submitted,

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